

REMARKS

The Applicant respectfully requests reconsideration of the present application in view of the above changes to the claims and the following remarks, which are responsive to the Final Office Action mailed April 23, 2009.

I. Status of the Claims

In the Office Action, Claim 69 was noted as pending in the application and was rejected. As a result of this response, Claim 69 remains pending and has been amended in order to further clarify the claimed invention.

II. Claim Rejections

a. 35 U.S.C. § 101

In the Office Action Claim 69 was rejected under 35 U.S.C. § 101 as being directed toward non-statutory subject matter. (Office Action, page 2). In particular, the Office Action states that the “only recitation(s) of structure is/are of a computer within a network of computers which is/are found to be insignificant extra-solution activity ... which does not transform an unpatentable principle (e.g., Software) into a patentable process.” (*Id.*). In response, Applicant respectfully asserts that the inclusion of a computer in the claimed method is not, as stated by the Office Action, “insignificant extra-solution activity” and is, therefore, sufficient to tie the claimed process to a particular apparatus, as required to be patentable under 35 U.S.C. § 101.

In support of this assertion, Applicant points to Applicant’s entire specification, which makes clear that a main purpose of the claimed invention is to replicate an offline sales encounter in an online environment, which *requires* the use of computers. For example, reference is made to the following excerpts of Applicant’s specification:

“A system does not exist that ... facilitates the type of interaction between the customer and the sales person that is familiar in the offline world ... The present invention addresses the current lack of *online* sales assistance by creating the

infrastructure to establish a system that allows accredited, experienced and product-knowledgeable sales personnel to sell goods and services ... particularly complex, highly consultative products, more effectively *over, through, or in conjunction with online channels.*" (Applicant's Specification, page 6, line 13- page 7, line 1, *emphasis added*).

"The present invention fundamentally changes *the Internet purchasing experience* from one akin to browsing in a catalog to one similar to purchasing goods or services in the offline world[.]" (*Id.* at page 7, lines 10-12, *emphasis added*)

"The present invention allows enterprises ... to *bring their existing sales force into contact with online browsers[.]*" (*Id.* at page 8, lines 3-5, *emphasis added*)

"The system of the present invention provides SAs with interactive tools that allow them *to emulate, as closely as possible, the interaction between customers and sales personnel that are commonly accepted in the offline world.* The closer the *online experience* reflects its offline counterpart, the quicker consumers will adopt the online channel as an adjunct to existing channels." (*Id.* at page 9, lines 10-14, *emphasis added*).

As described above, and throughout Applicant's specification, use of a computer is essential to the implementation of Applicant's claimed invention. As a result, inclusion of the computer in the process claim is neither nominal nor extra-solution activity and is, therefore, sufficient to tie the claimed process to a particular apparatus.

The Office Action further states that a "general purpose computer is not a particular machine, and thus innovative software processes are unpatentable if they are tied only to a general purpose computer[.]" (Office Action, page 2). Applicant respectfully disagrees. In particular, as pointed out by the Board of Patent Appeals and Interferences in *Ex parte Timothy J.O. Catlin, et al.*, Appeal 2007-3072 (BPAI, Feb. 3, 2009), "a general purpose computer programmed to carry out a particular algorithm creates a 'new machine' because *a general purpose computer 'in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software.'* [*WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 1348 (Fed. Cir. 1999)] ... quoting *In re Alappat*, 33 F.3d 1526, 1545 (Fed. Cir. 1994). The instructions of the software program in effect 'create a special purpose machine for carrying out the particular algorithm.' *WMS Gaming*, 184 F.3d at 1348." (*Catlin*, page 6, *emphasis added*). As a result, the computer included in

Applicant's Claim 69 is, in fact, a particular machine, and inclusion of this particular machine provides a sufficient tie to patentable subject matter.

Based on the foregoing, Applicant respectfully asserts that Claim 69 is directed toward patentable subject matter and requests that the rejection of Claim 69 under 35 U.S.C. § 101 be withdrawn.

b. 35 U.S.C. § 112

In the Office Action, Claim 69 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. (Office Action, page 3). In particular, the Office Action first points out a typographical error in line 3 of Claim 69. In response, Claim 69 has been amended, as shown above, to replace "a by computer" with "by a computer."

Second, the Office Action states that it is unclear whether "a computer" in lines 7, 9, 12, 17, 31, 32 and 36 of Claim 69 "relat[e] to the computer recited in line 3 or additional computers." In response, Applicant respectfully asserts that because Applicant used the article "a" in lines 7, 9, 12, 17, 31, 32 and 36 to introduce "computer," and not the article "the," it is clear that "computer" in lines 7, 9, 12, 17, 31, 32 and 36 does not refer back to the "computer" of line 3. If Applicant had intended for the "computer" in line 3 to provide antecedent basis for the "computer" in any of line 7, 9, 12, 17, 31, 32 or 36, Applicant would have used the article "the" in those lines to introduce "computer." Accordingly, Applicant respectfully asserts that it is not unclear to what "a computer" in lines 7, 9, 12, 17, 31, 32 and 36 of Claim 69 relate.

Third, the Office Action further points out a lack of clarity with regard to "the sales associate" in line 18 and "who first chooses to assist the customer" in line 24 of Claim 69. In response to this Office Action, Claim 69 has been amended, as shown above, to remove both of these recitations. The objection based on these recitations is, therefore, moot.

Finally, the Office Action states that there is insufficient antecedent basis for “the customer profile information” in line 34 of Claim 69. In response, Claim 69 has been amended, as shown above, to replace “customer profile information” with “customer information,” antecedent basis for which can be found in line 8 of Claim 69, as amended.

Based on the foregoing, Applicant respectfully requests that the rejection of Claim 69 under 35 U.S.C. § 112, second paragraph be withdrawn.

c. 35 U.S.C. § 103(a)

In the Office Action, Claim 69 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,134,530 to Bunting et al. (“*Bunting*”) in view of U.S. Patent No. 6,760,429 to Hung et al. (“*Hung*”). (Office Action, page 4). For at least the following reasons, Applicant respectfully requests that the rejection of Claim 69 under 35 U.S.C. § 103(a) be withdrawn.

Applicant respectfully asserts that neither *Bunting* nor *Hung* teaches, suggests or renders obvious each of the recitations of Claim 69. In particular, Applicant respectfully asserts that neither *Bunting* nor *Hung* teaches, suggests or renders obvious at least the following recitations of Claim 69:

receiving, by a computer within a network of computers, session information from a website about a customer session on the website, the website being associated with a selected enterprise from a plurality of enterprises and the session information comprising one or more products a customer is searching using a browser application executing on a customer computer; ...

determining, by a computer within the network of computers, from the session information and the customer information that the customer constitutes a sales opportunity appropriate for sales assistance; ...

facilitating communication for a sales transaction between the customer computer and the computer associated with the selected sales associate via the Internet; ...
[and]

retrieving, by a computer within the network of computers, from a database of collateral sales material, information previously determined to be effective in closing a sale given the sales associate information associated with the selected sales associate, the customer information and the one or more products the customer is searching[.]

In fact, the Office Action has not even attempted to point out the portions or sections of *Bunting* or *Hung* that teach, suggest or render obvious any of the above-listed recitations of Applicant's Claim 69. Applicant respectfully requests that the Examiner indicate where/how *Bunting* or *Hung* teach, suggest or render obvious any of the above recitations. For example, Applicant respectfully requests that the Examiner identify where/how *Bunting* or *Hung* teaches, suggests or renders obvious "determining, by a computer within the network of computers, from the session information and the customer information that the customer constitutes a sales opportunity appropriate for sales assistance," as recited in Applicant's Claim 69. Both *Bunting* and *Hung* disclose only routing of *customer-initiated* contact. Accordingly, neither *Bunting* nor *Hung* teaches or suggests "determining ... that the customer constitutes a sales opportunity appropriate for sales assistance," since *all* customers of *Bunting* and *Hung* would constitute sales opportunities, negating the need to make such a determination.

Applicant similarly asserts that *Bunting* and *Hung* further fail to teach, suggest or render obvious at least any of the other recitations of Claim 69 referenced above, and respectfully requests that the Examiner either withdraw the rejection of Claim 69 under 35 U.S.C. § 103(a) or provide a further explanation of how either of these references teaches, suggests or renders obvious each of the recitations of Claim 69.

III. Conclusion

In light of the remarks above, Applicant respectfully submits that the application is in condition for allowance and respectfully requests that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

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It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 14-0629.

Respectfully submitted,

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